

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

RONALD C. TUSSEY, et al.,

Plaintiffs,

v.

ABB, INC., et al.,

Defendants.

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Case No. 06-cv-04305 (NKL)

**FIDELITY DEFENDANTS' REQUEST FOR CLARIFICATION OR,
IN THE ALTERNATIVE, MOTION FOR MODIFICATION OF INJUNCTION**

Pursuant to Rule 59 and/or Rule 60 of the Federal Rules of Civil Procedure, Defendants Fidelity Management Trust Company ("Fidelity Trust") and Fidelity Management & Research Company ("Fidelity Research") (collectively "Fidelity" or the "Fidelity Defendants") respectfully request clarification of that portion of the Court's March 31, 2012 Order [Dkt. No. 623] (the "Order") that provides:

[T]her Court orders that, within 18 months from the date of this Order, ABB utilizes a competitive bidding process, including a request for proposal, to select a new recordkeeper. Fidelity Trust is permitted to take part in this process.

...

So long as [ABB] serves as a fiduciary to the Plan, ABB shall not use a PRISM recordkeeper to provide any corporate services to ABB.

Order at 79-80.

As set out more fully in the Suggestions filed herewith and as described at trial, Fidelity Trust (or its affiliates) is the trustee and recordkeeper for the PRISM plans, and also provides recordkeeping and other administrative services in connection with multiple defined benefit ("DB") and health and welfare benefit ("H&W") plans sponsored by ABB under a services

agreement between Fidelity and ABB, Inc. (“ABB”). Fidelity seeks clarification that the Order does not prohibit Fidelity Trust or its affiliates from continuing to meet obligations they have with respect to the PRISM Plans and the DB and H&W plans pending ABB’s selection of a new PRISM recordkeeper (or a new DB/H&W provider) during the time frame established by the Order (within 18 months). Alternatively, if the Court’s injunction as to the use of a PRISM recordkeeper who also provides corporate services is meant to apply before the selection of a new recordkeeper, Fidelity respectfully moves for a modification of the Order to allow Fidelity Trust and its affiliates to continue to perform their contractual services pending a transition to another provider of ABB’s selection.

In support of this Request, Fidelity submits herewith its Suggestions of Law in Support of Request for Clarification or, in the Alternative, Motion for Modification of Injunction, and supporting documents.

WHEREFORE, the Fidelity Defendants request that the Court clarify its Order to confirm that Fidelity’s current and ongoing provision of services with respect to the PRISM Plans and the DB and H&W plans shall not be deemed conduct in violation of the Order, or, in the alternative, that the Court modify the Order to allow Fidelity to continue to perform its contractual obligations pending transition to another provider, at the direction of ABB, of either Fidelity’s PRISM recordkeeping responsibilities or its responsibilities with respect to the DB and H&W plans.

Respectfully submitted this 30th day of April, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of, April, 2012, the foregoing was filed and service made by the Court's Electronic Case Filing (ECF) system to:

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